

TOWN OF JERUSALEM  
ZONING BOARD OF APPEALS

November 12<sup>th</sup>, 2020

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order on Thursday, November 12<sup>th</sup>, 2020 at 7 pm by Vice-Chairman Rodgers Williams.

The meeting opened with everyone standing for the pledge to the Flag.

Roll Call:	Glenn Herbert	Excused
	Rodgers Williams	Present
	Earl Makatura	Excused
	Joe Chiaverini	Present
	Lynn Overgaard	Present
Alternate	Jim Bird	Present
Alternate	Steve Schmidt	Present

Others present included: Liudy & Pam Bukys, Terry & Ken Knepple, Tammy Savoie, Lester & Linda Hoover, Heidi Bauer, Eileen & Keith Frum, Nancy Stoddard, Eric & Regina Martin, Helen Smith, and Melvin B. Shirk.

A motion was made by L. Overgaard and seconded by J. Bird to approve the October Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS:

There was a letter from a neighbor regarding Application #1183 (copy on file with application)

AREA VARIANCE/SPECIAL USE REVIEW:

Application #1180 for R. Michael & Sharlene Briggs for property at 4730 East Bluff Dr., Penn Yan requesting an Area Variance to install an 8' by 12' pre-built storage shed on the portion of the lot located between the road and the lake with the set back from the center of the road measured at 24.75 ft. where 44.75 ft. is required. This property is located in the (R1) Lake-Residential Zone.

Mr. Liudy Bukys was present to represent Mr. & Mrs. Briggs and an email had been sent through to the Zoning Board members from Mr. Briggs stating that Mr. Bukys would be representing their applications.

Board members had reviewed the submitted paperwork, and there was a question about the exact location of the highwater mark. It was suggested that highwater mark be verified.

It was also noted that requested area variance to the rear yard property line is right up next to the gabion baskets that there should be no excavation at this point. Mrs. Bukys noted that they were just planning to level the area and then set the sheds down on the leveled spots.

The area variance test questions were read and reviewed with the following results:

1)Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: (5-no, 0-yes).

2)Whether the benefit sought by the applicant can be achieved by some other feasible method than an area variance: (5-no, 0-yes).

3)Whether the requested area variance is substantial: (4-no, 1-yes), R.Williams-no, L.Overgaard-no, J. Chiaverini-no, J. Bird-yes, because it is next to the highway right-of-way line; S. Schmidt-no.

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (5-no, 0-yes). No, because the storage shed will just sit on top of the leveled beach area.

5)Whether the alleged difficulty was self-created: (5-yes, 0-no).

The board was in unanimous agreement that this was a SEQR Type II action.

A motion was made by J.Bird and seconded by R.Williams to grant this application as applied for with the storage shed to be placed next to the rear yard property line with no rear yard setback or 24.75 ft. from the center of the traveled way. The highwater mark is to be reviewed by the CEO with the property owner and the Town will not be held responsible for any damage to the storage building due to routine highway maintenance including plowing and pushing back of snow.

The motion was carried with a poll of the board as follows: S. Schmidt-grant, J. Chiaverini-grant, L. Overgaard-grant, R. Williams-grant, J. Bird-grant.

In granting this area variance the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this location.

Application #1181 for R. Michael & Sharlene Briggs for property at 4771 East Bluff Dr., Penn Yan requesting an Area Variance to install an 8' by 8' pre-built storage shed on the portion of the lot located between the road and the lake with the setback from the center of the road measured at 24.75 ft. where 44.75 ft. is required and also requesting a 4 ft. side setback from the north property line where 10 ft. is required .

Board members had reviewed this application and visited the site. The board was not in favor of the side yard setback as there seemed to be plenty of room for the applicant to meet the 10 ft. side yard setback. Regarding the rear yard setback, once again the storage shed should be set on a leveled area on the beach with no digging into the area of the gabion baskets.

The area variance test questions were read and reviewed regarding a rear yard area variance and no area variance to be given for a setback from the north side yard property line. Following are the results:

1)Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: (5-no, 0-yes).

2)Whether the benefit sought by the applicant can be achieved by some other feasible method than an area variance: (3-no, 2-yes); R. Williams-no, J. Chiaverini-yes, L. Overgaard-yes, J. Bird-no, S. Schmidt-no.

3)Whether the requested area variance is substantial: (3-no, 2-yes), R.Williams-no, L.Overgaard-no, J. Chiaverini-no, J. Bird-yes, because it is next to the highway right-of-way line; S. Schmidt-yes.

4)Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district: (5-no, 0-yes). No, and for the same reason as the applicant's previous area variance, because the storage shed will just sit on top of the leveled beach area and not into the gabion area.

5)Whether the alleged difficulty was self-created: (5-yes, 0-no).

Board members were in unanimous agreement that this was a SEQR Type II action.

A motion was made by R. Williams and seconded by S. Schmidt to grant the area variance for zero setback from the rear yard property line or 24.75 ft. as measured from the center of East Bluff Dr. and that the storage shed shall be set on a leveled area on the beach area with no digging into the bank or under the gabion baskets. The Town will not be held responsible for any damage to the storage building due to routine highway maintenance including plowing and pushing back of snow.

The motion was carried with a poll of the board as follows: J. Chiaverini-grant, J. Bird-grant, L. Overgaard-grant, S. Schmidt-grant, R. Williams-grant.

Special Use Application #1182 for Lester Hoover for property at 2792 Keech Rd., Branchport, requesting a Special Use Permit for a small retail service business to operate a neighborhood grocery store facility in the Agricultural-Residential Zone. This is an allowed use in this Zone.

Since the Planning Board had not acted on the Site Plan for this application and had not reviewed the SEQR application at their November meeting, it was noted that the Zoning Board would only hold the public hearing for this application at this time, but would not made a decision regarding the Special Use until their December Zoning Board meeting.

The public hearing for this special use was opened for comment at 7:20 PM. Board members had reviewed the submitted application material. Mr. & Mrs. Hoover were present to answer questions and had submitted additional detailed drawings for their property showing the location of their buildings and the approximate distances to their property lines. In addition, there was a detailed drawing of the inside of the store and how it is set-up to service customers. (copies on file with application).

Vice-Chairman R. Williams asked if there was anyone present wanting to speak to this application.

There were no neighbors present to speak or ask questions regarding this application.

Vice-Chairman R. Williams asked for a motion to close the public hearing. A motion was made by J. Bird and seconded by L. Overgaard to close the public hearing for Special Use application #1182. The motion was carried unanimously.

Mr. Hoover asked when the next meeting would be and it was noted that the Planning Board meeting would be on the 3<sup>rd</sup> of December and the Zoning Board meeting would be on the 10<sup>th</sup> of December.

Application #1183 for Eric Martin for property at 4288 Friend Rd., Penn Yan, requesting a Special Use Permit to operate a dog kennel facility in the Agricultural-Residential Zone. This is a Special Use in the Ag-Res Use District and subject to Special Use regulations under Article V, Section 160-24 and for Site Plan review by the Planning Board.

This application was not reviewed at the November Planning Board meeting and the SEQR application has not been reviewed and therefore it was noted by the Vice-Chairman of the Zoning Board that the Zoning Board would not make a decision with regards to this Special Use Application until their December Zoning Board meeting. He did note, however, that since the application had already been advertised and letters sent out, the public hearing would be opened for anyone wishing to comment or express their concerns to be heard at this time. He then opened the public hearing at 7:30 pm .

Mr. Martin was present to answer questions, and gave just a brief review of his application. He had also given the board members an updated drawing of his farm with respect to the location of his buildings and the location for his proposed new building for housing his kennel facility. The drawing also gave approximate distances from his buildings to his property lines. (copies on file with application).

Board members did not have many questions, there were several neighbors present with concerns.

Questions were asked as to the allowed number of breeding females being 8 and who made that determination for the code. Vice-Chairman R. Williams explained that a committee had worked on this special use legislation for the dog kennel facilities for almost two years. The effort was made to come up with appropriate wording that would be acceptable to both sides (both pro and con) regarding these types of facilities. He noted that the kennel law was an attempt to avoid undesirable conditions created by unregulated kennels in the Town and this was the first application to be reviewed by the ZBA since the law was adopted. He also noted that a public hearing was held by the Town Board, for any who wished to speak to this proposed legislation, before it was adopted.

He also added that in the case of reviewing Special Use applications the Zoning Board is an administrative board and not a legislative board, concerns with the content of the law should be addressed to the Town Board.

There were other questions regarding what would happen to the dogs and puppies which was answered by the requirement of accountability to Ag & Markets for each dog that has to be verified each time they make a visit and all of the dogs/puppies must be accounted for.

This was verified by Mr. Martin who noted when he is given the go ahead from Ag & Markets and the USDA to operate his kennel, every dog is given a number as well as the puppies when they are born and he must account for each and every dog every time that the inspector from Ag & Markets comes to his kennel facility.

If a dog dies or if a dog or puppy is sold, he must account for the dog as to how and where it was disposed of or who it was sold to.

Noise and barking of dogs were also questioned. Who takes care of this problem? It was noted that any and all complaints can be given to the Code Enforcement Officer who will check out and verify the complaints and take whatever action is necessary to resolve the issue.

There was one letter (copy on file) written in support of this application. Another neighbor, who was present, also spoke in favor of the Martin's having the kennel facility.

The Yates County Planning Board had reviewed both Site Plan and Special Use submitted material for this project and had determined there to be no County-wide or inter-municipal impact. (copy of decisions on file with application).

Neighbors asked questions about the size of the kennel pens themselves for the dogs and the puppies. There were also questions about the kennel runs. Mr. Martin answered the questions and also stated that he was open to any suggestions that anyone including neighbors might have. He stated that they would like to have good neighbor relations and to be open about what their kennel plans are.

Mr. Martin stated that he was looking at solid fencing for the outside kennel runs.

Regarding noise and a neighbor being concerned about hearing a lot of dogs barking at night (since they have their windows open year-round), Mr. Martin stated that they have considered keeping the dogs inside at night like house dogs so they would not hear coyotes or outside noises. He again stated that they want to be good neighbors with everyone around them.

The subject of "Puppy Mills" also came up, however, it was noted by the chairman that similar type businesses in other Towns have given dog kennel facilities a "bad name" for the alleged reasons for which they are operating their businesses.

Mr. Martin had submitted in his application materials the name of the veterinarian from Eastview Veterinary Clinic, Dr. Leah Webb, who was helping him with his Veterinary Care Plan for the dogs and puppies, (copy of plan on file with application).

Mrs. Martin stated that her children spend a lot of time with the dogs and puppies and she does as well. She invited neighbors to come and visit them to see how the children interact with the dogs and to see how the animals are cared for.

There was a question about Nettle Creek which was identified as a stream that is located nearby.

Mr. Martin stated that his kennel is approximately 150 ft. from this stream and would not be affected by the area where he would have the dog waste composting area located. The stream runs in a south westerly direction away from his property and this composting area.

Vice-Chairman R. Williams noted when asked about the procedure of this special use, stated that the Zoning Board reviews the application material submitted for Special Use to see that it complies with the conditions as set forth in the ordinance under Article V, Section 160-20 C & 160-24 A-E. The special use is also subject to site plan review which is reviewed by the Planning Board. The SEQR application is also reviewed by the Planning Board and a determination of its impact is made by the Planning Board based on review of Part 1 and Part 2 and review of the submitted materials.

The Zoning Board holds a public hearing for the special use application to hear from neighbors who have been notified of the scheduled public hearing. The public hearing is also open to any who wish to speak or have concerns regarding the proposed application.

Vice-Chairman R. Williams asked if there was anyone else who wished to speak to this application or had any concerns. There being no more questions or concerns, a motion was made by J. Bird to close the public hearing for Special Use Application #1183 and it was seconded by S. Schmidt. The motion was carried unanimously and the public hearing for this application was closed at 8 pm.

Mr. Martin was asked what kind of dogs that they were going to be raising and he said they were goldendoodles which he said are part poodle and part golden retriever.

Mr. Martin also asked if he should be present at the December meeting. Since the public hearing portion of the meeting has already been held, the board will review the application materials and review the results of the December 3<sup>rd</sup> Planning Board meeting and will then be able to make their decision regarding the Special Use application.

#### OTHER BUSINESS:

The next meeting will be on December 10<sup>th</sup>, 2020.

Review of Chairman and Vice-Chairman for 2021 at the December meeting.

It was briefly noted that there will be two new applications for the December meeting along with review and decisions for Application #1182 and #1183.

There being no further business, a motion was made by J. Bird and seconded by L. Overgaard to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,  
Elaine Nesbit/Zoning Secretary

